

**Romanian answer to the "Questionnaire for the preparation
of the CCPE Opinion no. 12 (2017),
"The rights of victims, witnesses and vulnerable persons"**

1. Definitions

- 1.1 There are definitions established in the *Code of criminal procedure* and special laws such as the *Law on witness protection*, the *Law on the prevention and fight against trafficking in human beings*, etc.
- 1.2 There are special regimes for victims of family violence, victims of crimes of trafficking in human beings, persons against whom was committed an attempt to homicide crimes, serious bodily injury, an intentional crime leading to the victim's serious bodily injury, a crime of rape, sexual intercourse with a minor and sexual perversion, etc.
- 1.3 The Code of criminal procedure establishes special regulations on the hearing of minors, protected witnesses, as well as definitions and special provisions as regards "vulnerable witness", "threatened witness."

2. The rights of victims, witnesses and vulnerable persons

- 2.1 Yes, there are.
- 2.2 Yes, they are set out in the Code of criminal procedure and in special laws, such as those listed at par. 1.1.
- 2.3 Any injured persons has the right to be informed as to his/her rights, to be advised as to the development of the procedure, the right to file a prior complaint, the right to bring a civil action, the right to be assisted by a lawyer, and in some cases the right to be granted a publicly appointed lawyer, the right to resort to a mediator in the cases the law allows it, etc., and for certain categories of victims the following are distinctly regulated: the right to the respect of the personality, dignity and private life, the right to be informed as to the exercise of their rights, the right to special protection that should cope with the situation and the needs, the right to counseling, rehabilitation, social reinsertion, as

well as free medical assistance, the right to free legal counseling and assistance, the right to financial compensation, etc.

2.4 The judicial bodies have the obligation to inform the victims, the injured persons and the witnesses as to the rights they have. The compliance with this obligation shall be put down in a minutes of proceedings. The information relating to the rights of victims shall be published on the web pages of the Ministry of Justice and Ministry of Administration and Interior. The courts of law, the prosecutor's offices attached to courts of law and the police units can publish on their web pages relevant information. Useful information shall also be published on the site of the National Agency for Gender Equality within the Government of Romania and there is also a hotline for special assistance.

2.5 For the failure to observe some of the rights the law sets out procedural, contraventional or criminal liabilities.

2.6 Yes, there are, especially with regard to minors.

2.7 There is a public database, easily accessible and permanently updated allowing easy identification of the convictions delivered against a person. The courts of law are obliged to enter the information necessary to update it. There is also the obligation of communicating the adoption of certain measures (such as provisional arrest or the issuance of a protection order etc.) to bodies or authorities with responsibilities aiming at protecting minors, persons under interdiction, or who, due to their age, sickness or any other reasons, are in need of assistance, or at preventing acts of domestic violence etc.

2.8 The hearing of the witness minor aged under 14 takes place in the presence of one of the parents, of the tutor or the person or representative of the institution to which the minor's rearing and education is entrusted. If these persons cannot be present or they have the qualification of suspect, defendant, injured person, civil party, civilly responsible person or witness in the case or if there is a reasonable doubt that they may influence the statement of the minor, his/her hearing shall take place in the presence of the tutelary authority or a relative with full capacity of exercise, according to the ruling of the judicial body. If necessary, upon request or *ex officio*, the criminal

investigation authority or the court shall rule that a psychologist be present during the minor's hearing. The hearing of the underage witness must avoid having any negative effect upon his/her mental state. The underage minor who has not turned 14 by the time of the hearing shall not take an oath, but he/she will be warned to tell the truth.

2.9 The persons who find themselves in a situation that reasonably raises questions as to their capacity of being a witness can bear testimony only after the judicial body has ascertained that the person was capable of consciously reporting facts and circumstances which describe reality. In order to decide as to the capacity of a person to be a witness, the judicial body shall rule, upon request or *ex officio*, any necessary examinations by way of the means stipulated under the law.

2.10 See answer to question 2.10.

Additionally:

The prosecutor or, as the case may be, the court can decide to grant the quality of vulnerable witness to the following categories of persons:

- a) the witness who suffered a trauma as a result of the crime being committed or as a result of the subsequent behaviour of the suspect or defendant;
- b) the underage witness.

Together with granting the status of vulnerable witness, the prosecutor and the court can rule the following protective measures:

- accompanying and ensuring protection to the witness or to their family members during travels;
- hearing of a witness without them being physically present, through audio-video transmission devices, with their voice and image distorted, when the other measures are not sufficient.
- not making public the court session during the hearing of the witness;
- protecting the identity data of the witness, by issuing a pseudonym under which he/she shall testify.

Voice and image distortion is not mandatory.

2.11 Such procedures are regulated for witnesses who are granted the status of threatened or vulnerable witness. Also, protected witnesses can be interviewed under another identity than their real one or by special means of image and voice distortion.

2.12 The court of law can order, as an ancillary penalty, the interdiction to exercise, among others, the following rights:

- the right to communicate with the victim or the victim's family, with the persons together with whom they committed the offense or with other persons as established by the Court, or the right to go near such persons;
- the right to go near the domicile, workplace, school or other locations where the victim carries social activities, in the conditions established by the Court.

2.13 The law does not distinguish between Romanian and foreign citizens.

3. Role of prosecutors in protecting the rights of victims, witnesses and vulnerable persons

3.1 The rights are set out in the Code of criminal procedure or in special laws governing the conditions and the obligation to take the measures which should ensure compliance.

More specifically, the prosecutor may order measures to protect the threatened witness, the vulnerable witness, he/she may order or propose the inclusion of a witness in the "Witness protection program", etc. See also answer to question 2.9. and so on.

Generally speaking, the Code of Criminal Procedure provides that the prosecutor should directly run and control the criminal investigation activity carried out by the judicial police and the special criminal investigation bodies set out by the law. The prosecutor also sees that the criminal investigation acts be performed in compliance with the legal provisions.

3.2 Yes, as I have already mentioned, there are provisions in the Code of criminal procedure and in special laws. *The Code of ethics for judges and prosecutors* generally stipulates that judges and prosecutors are bound

to respect the equality of citizens before the law, by providing them a non-discriminatory legal treatment, to respect and protect the dignity, bodily and moral integrity of all persons involved in the judicial proceedings, irrespective of their capacity.

3.3 Prosecutors fulfill their tasks set out by the law, collaborating with other agencies involved in the enforcement of the rights of these persons and which have the possibility to notify and sanction / remedy any deficiencies that may be identified in the act of performing, managing or supervising the criminal investigations.

3.4 Yes, such a possibility exists. The prosecutor shall take all the appropriate measures under the law or initiate steps for their implementation by other relevant authorities.

3.5 Yes, it is possible.

3.6 Prosecutors collaborate with the courts, the Ministry of Interior, other ministries, central and local public administration authorities or non-governmental organizations and civil society representatives when the situation requires it.

3.7 During the professional training sessions of prosecutors organized by the National Institute of Magistracy there are seminars dedicated exclusively to these issues. At the same time, the Public Ministry organizes seminars, conferences, scientific sessions, study visits, round-tables inviting representatives of police or other special investigation bodies, as well as of non-governmental organizations, events dedicated to these topics alone or during which aspects related to the protection of these categories of persons are also raised. When invited, prosecutors participated in various professional training meetings / sessions for the police or other special inquiry authorities, offering their expertise on certain subjects / topics, including those mentioned above.